

### REMARKS

Reconsideration of the instant application is respectfully requested. The present submission is in response to the Office Action of January 12, 2004, in which claims 1-3 and 6-21 and 23 are presently pending.

In the present action, the Examiner has indicated that the reply (Amendment and Response to Restriction Election) filed by the Applicants on October 22, 2003 is not fully responsive for the reason that the Applicant's statement of the claims that read on the elected species (i.e., claims 1-3, 6-14, 19-21 and 23) is not in agreement with the Examiner's position as to what claims read on the elected species (i.e., claims 1 and 6-10). For the following reasons, however, the Applicants once again respectfully traverse the Examiner's position as to which claims properly read on the elected species.

MPEP Section 806.04(f) provides that:

"Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species."

It is the Examiner's position that claims 2, 11-14 and 19 are not included in the species for the reasons outlined in paragraph 2 of the present office action. However, a comparison between claims 1 and 2 reveals that claim 2 now includes each of the limitations of claim 1, in addition to the limitation: "...wherein the step of increasing a differential oxidation rate further comprises immersing the semiconductor substrate into a solution while passing a current of about 0.1 milliamps per centimeters squared to about

300 milliamps per centimeters squared.” Thus, although claim 2 has limitations not found in claim 1, each limitation in claim 1 is now found in claim 2. As such, claim 1 and 2 are not mutually exclusive and should not be restricted to different species.

Furthermore, since claim 3 depends from claim 2, claims 1 and 3 are also not mutually exclusive and should not be restricted to different species. As to claims 11-14, it should be noted that each is dependent directly from claim 1, so again there is no mutual exclusivity of these claims with regard to the elected species.

Finally, a comparison between independent claim 19 and claim 1 reveals that claim 19 is a more specific recitation of each of the claimed elements of claim 1. For example, whereas claim 1 recites the general term “patterning and blocking”, claim 19 recites “photomasking with a photoresist material”. Also, claim 1 recites, for example, the general term “removing” while claim 19 recites the more specific term “etching”. However, both claims now provide for converting the exposed (etched) portion of the semiconductor surface from a non-porous silicon material to a porous silicon material. Thus, once again, there is no mutual exclusivity as between claims 1 and 19 since there is no element in claim 1 that cannot be read into claim 19. Further, since claims 20, 21 and 23 each depend from claim 19, they should also not be restricted to a different species.


In light of the above, a reconsideration of the requirement for restriction as to the claims properly included in the provisionally elected species is again respectfully requested. The Applicants respectfully maintain that Species I includes at least claims 1-3, 6-14, 19-21 and 23.

The Applicants reserve the right to file a divisional application directed to any non-elected subject matter in the present application. If the Examiner has any queries regarding the instantly submitted preliminary amendment and response, the Applicants’ attorney respectfully requests the courtesy of a telephone conference to discuss the same.

For the above stated reasons, it is respectfully submitted that the present application is now in condition for allowance. No new matter has been entered and no additional fees are believed to be required. However, if any fees are due with respect to this Amendment, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorneys.

Respectfully submitted,  
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